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State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

 PETITION FOR DECLARATORY JUDGMENT
 SCHOOL ADMINISTRATIVE UNIT NO. 9

CASE NO. T-0360
 DECISION NO. 85-13

APPEARANCES

Representing School Administrative Unit #9

Jay C. Boynton, Esq., Counsel
 Dr. Francis M. Murphy

Representing Superintendent of Schools for NEA/New Hampshire

James F. Allmendinger, Esq.

Representing State of New Hampshire Department of Revenue Administration

Leslie Ludke, Assistant Attorney General

BACKGROUND

This request for declaratory judgment is brought by School Administrative Unit #9, the "supervisory union" for nine school districts in the North Conway area of New Hampshire. This S.A.U. has teacher employees and other direct employees, employed by the administrative unit to serve the school districts which make up the administrative unit. These employees have organized for collective bargaining under the rights and provisions of RSA 273-A. Because of the practical problems which have arisen in connection with the terms of RSA 273-A:1, III as to budget submission dates, when read with the provisions of RSA 273-A:12 as to resolution of disputes, and because of the apparent requirements of RSA 189:47, 189:47-a and other statutes relating to school administrative unit budget processes as they relate to adoption of budgets and raising of funds by school districts which are parts of school administrative units, School Administrative Unit #9 has asked the advice of the Public Employee Labor Relations Board as to the proper budget submission date to be observed by school administrative units in connection with collective bargaining. The two options presented are the budget submission date stated in the definition section of RSA 273-A:1, III which states that the budget submission date for supervisory unions is February 1, and the date stated in RSA 189:47 which states "at a meeting held before January 1 of each year, the school administrative unit shall adopt a budget required for the expenses of the school administrative unit for the next fiscal year..."

The Public Employee Labor Relations Board held a hearing on the declaratory judgment request at its offices in Concord on February 12, 1985.

FINDINGS OF FACT

The Board finds that School Administrative Unit #9 is the first or one of the first school administrative units to be "organized" under RSA 273-A with the certification of an exclusive representative for collective bargaining processes with employees directly employed by it. This presents it with a unique set of concerns in setting its budget for payment of employees employed by it.

A school administrative unit is required by the statute to adopt its budget by January 1 each year in order to pass along the pro-rata share of expenses to the school districts making up the school administrative unit in time for them to include their pro-rata share of the school administrative unit budget in their individual school district budgets.

Because of the situation facing the school district, it is incumbent on the administrative unit to complete collective negotiations with its employees at the earliest possible time so that it will not be delayed in completing its budget and in its required processes for establishing the portion of the budget to be passed to individual school districts.

There was no dispute on these facts at the hearing. Therefore, the school administrative unit #9's request for findings of fact and rulings of law number 1, the only request on a pure factual issue, is granted. However, the Board would note that the pressures on school administrative units to reach agreement and include salaries in the budget are not unique to them. Also, the Board would note that all employees face issues presented by their budget submission dates and are able to deal with them in accordance with the Legislative mandates contained in RSA 273-A.

RULINGS OF LAW

The school administrative unit asked the Board to establish a date different from February 1, that established by RSA 273-A:1, III as the budget submission date, on several bases. First, the practical need for early negotiations and impasse resolution makes it desirable to do so. Second, the provisions of RSA 189:47 require that the school administrative unit board shall "adopt" a budget for the next fiscal year prior to submitting it to the school districts which School Administrative Unit #9 contends establishes an inconsistent budget submission date. Third, the Unit seems to request an even earlier date of December 1 because of the practical problems involved in negotiations, establishing budgets, holding hearings and complying with the various statutes under which school administrative units operate.

The New Hampshire Educational Association takes the position that the provisions of RSA 273-A are either not inconsistent with RSA 189 or, under the doctrines of statutory construction, have repealed the January 1 date contained in RSA 189:47 by implication, the provisions of RSA 273-A having been passed later than the provisions of RSA 189:47.

The Board finds that the provisions of RSA 273-A are clear as to the definition of budget submission dates for labor relations purposes. RSA 273-A:1, III states that the budget submission date for a supervisory unit clearly sets forth February 1st as that date.

As presented at hearing, in testimony by the Assistant Attorney General, the statutory scheme for holding hearings, submitting budgets to school districts for submission to the school district meetings on the earliest date provided for those meetings (March 1st) can be met using the February 1 date so the statutory scheme for submission to the school district boards and school district meetings is no inherently contradictory and can be made to work.

If necessary for decision on the matter, the Board finds that the provisions of RSA 273-A:1, III were adopted after the establishment of the January 1 date in RSA 189:47, regardless of the dates on which that statute was amended or recodified and the Legislature must have been aware of that provision at the time it passed 273-A. For that reason, the provisions of RSA 273-A take precedence under the various doctrines of statutory construction. See RSA 624:11. The Board would add that it has no jurisdiction over the enforcement of RSA 189:47 or statutes other than RSA 273-A.

There is no provision in the statute governing public sector labor relations that negotiations cannot start at an earlier date than the time limits set forth. In the event that there is concern by school administrative units and labor organizations which have organized employees of those units that there is insufficient time to complete the process, negotiations can start at an earlier date. In addition, should the parties so desire, then can avail themselves of the dispute resolution provisions of RSA 273-A:12 whenever they wish. See RSA 273-A:12, I.

There is no basis in law for establishing any date other than February 1 for and as the "budget submission date" contemplated by RSA 273-A and its processes and the Board is without authority to do so, given the clear statements in the statute. As stated above, however, this should not create an impossible situation under the statutes.

If not ruled on above, the Board makes the following rulings on the School Administrative Unit's request for rulings of law:

Request #2 is granted but the Board notes that the processes of RSA 273-A:12 are available at any time the parties request.

Request #3 is granted except that the Board adds that once the school administrative unit has adopted a budget, the school districts have no power to refuse to appropriate the funds to support the school administrative unit as was established by testimony of the Assistant Attorney General and is set forth in statute.

Requests #4 & #5 are granted.

(Requests #7, 8, 9 and 10 have been covered in other rulings of law set forth above.)

ORDER

The Board orders that the answer to the request for declaratory judgment be that the budget submission date as set forth in the provisions of RSA 273-A:1, III, February 1, is the budget submission date for school administrative units for all purposes of collective bargaining.


ROBERT E. CRAIG, CHAIRMAN

Signed this 1st day of March, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Board members Richard Roulx, Russell Verney and Seymour Osman present and voting. Also present, Board Executive Director Evelyn C. LeBrun and Board Counsel, Bradford E. Cook.